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★ JUN 22 2012 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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POPPY'S WHOLESALE PRODUCE INC.,

Plaintiff,

-against-

S&S GROCERY OF NY CORP., doing business as
Stern Grocery, CHARLOTTE SPITZER, and
MENDY SPITZER,

Defendants.

BROOKLYN OFFICE

ORDER

11-CV-4337 (NGG) (LB)

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NICHOLAS G. GARAUFIS, United States District Judge.

Plaintiff Poppy's Wholesale Produce, Inc., brings suit against Defendants S&S Grocery Corp., Charlotte Spitzer, and Mendy Spitzer, alleging Defendants are liable to it for failing to pay for items of produce, pursuant to the Perishable Agricultural Commodities Act, 7 U.S.C. § 499a et seq. (Compl. (Docket Entry # 1).) Defendants did not file an Answer or otherwise respond to Plaintiff's suit, despite being served with process. (See Docket Entries # 2-4.) The Clerk of Court noticed default. (Docket Entry # 8.) Plaintiff then moved for default judgment and a determination of damages. (Docket Entry # 9.) This court referred Plaintiff's motion to Magistrate Judge Lois Bloom for report and recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1). (Feb. 16, 2012 Order.) Judge Bloom has since issued her Report and Recommendation ("R&R") in which she recommends granting Plaintiff's motion for default judgment with \$ 7,154 in damages, and denying Plaintiff's request for pre-judgment interest, attorney's fees, and costs. (Docket Entry # 10.)

No party has objected to Judge Bloom's R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). Accordingly, the court reviews Judge Bloom's R&R for clear error. See 28

U.S.C. § 636(b)(1). Having reviewed Judge Bloom's well-reasoned R&R, the court adopts it, see Porter v. Potter, 219 F. App'x 112, 113 (2d Cir. 2007), except for its recommendation as to costs. Federal Rule of Civil Procedure 54(d)(1) permits the prevailing party to receive its costs even if it is not eligible to receive its attorney's fees, and so the court overrules the recommendation in the R&R that Plaintiff's request for costs be denied along with its request for attorney's fees. Accordingly, the court GRANTS Plaintiff's motion for default judgment and awards \$7,154 in damages; the court DENIES Plaintiff's application for pre-judgment interest and attorney's fees. Plaintiff may request that the Clerk of Court tax Plaintiff's costs for the items listed in Local Rule 54.1 according to the schedule set forth in that rule. Plaintiff shall serve a copy of this Order on Defendants and file proof of service. The Clerk of Court is directed to close this case.

SO ORDERED.

Dated: Brooklyn, New York
June 21, 2012

s/Nicholas G. Garaufis
NICHOLAS G. GARAUFIS
United States District Judge